

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 98-0592  
SALES AND USE TAX  
FOR TAX PERIODS: 1992-1995**

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**Issues**

**1. Sales and Use Tax-Double Taxation**

**Authority:** IC 6-2.5-3-2(a), IC 6-2.5-3-4(a)(1), IC 6-8.1-5-1 (b).

The taxpayer protests the imposition of both sales and use tax on certain items.

**2. Sales and Use Tax-Manufacturing Machinery and Equipment**

**Authority:** IC 6-2.5-5-3, IC 6-2.5-5-4, 45 IAC 2.2-5-10 (c), 45 IAC 2.2-5-10 (h)(2), 45 IAC 2.2-5-7 (h), *Gross Income Tax Division v. National Bank and Trust Co.*, 79 N.E. 2d 651, (Ind. 1948), *Indiana Department of Revenue v. Cave Stone* 457 N.E. 2d 520, (Ind. 1983).

The taxpayer protests the imposition of use tax on various items.

**3. Sales and Use Tax-Vendor Stocking**

**Authority:** IC 6-2.5-5-3.

The taxpayer protests the assessment of use tax on items from vendor stocking accounts.

**4. Sales and Use Tax-Equipment to Move Work In Process**

**Authority:** IC 6-2.5-5-3, 45 IAC 2.2-5-8 (f)(3).

The taxpayer protests the imposition of use tax on certain equipment used in transportation.

**5. Sales and Use Tax-Safety Equipment**

**Authority:** IC 6-2.5-5-3, 45 IAC 2.2-5-8 (c)(2)(F).

The taxpayer protests the assessment of use tax on safety equipment.

**6. Sales and Use Tax-Services**

**Authority:** IC 6-2.5-2-1, IC 6-2.5-4-10, IC 26-1-2-301, 45 IAC 2.2-4-2.

The taxpayer protests the assessment of use tax on certain services.

**7. Sales and Use Tax-Product Labels**

**Authority:** IC 6-2.5-5-6.

The taxpayer protests the assessment of use tax on labels.

**8. Sales and Use Tax-Packaging**

**Authority:** IC 6-2.5-5-3, 45 IAC 2.2-5-16(c)(1).

The taxpayer protests the assessment of use tax on tie-down straps and tie-rods.

**9. Sales and Use Tax-Testing Equipment**

**Authority:** IC 6-2.5-5-3, 45 IAC 2.2-5-10.

The taxpayer protests the assessment of use tax on certain testing equipment.

**10. Sales and Use Tax-Capital Purchases**

**Authority:** IC 6-2.5-8-9, IC 6-2.5-5-3, IC 6-2.5-5-30 (1), 45 IAC 2.2-4-22 (e), 45 IAC 2.2-8-17, 45 IAC 2.2-5-8 (j), *Indiana Department of State Revenue v. RCA\_Corporation*, 310 N.E. 2d 96 (Ind. 1974).

The taxpayer protests the assessment of use tax on capital purchases.

**Statement of Facts**

The taxpayer operates a steel manufacturing facility. Products include hot-rolled and cold-rolled sheets, plate products, zinc-coated steels for corrosion protection and tin products used in the food and beverage industry. Customers also include the automotive, appliance, metal building and home construction industries. The Indiana Department of Revenue (Department) performed a sales and use tax audit for the tax period January 1, 1992 through December 31, 1995. During the course of the audit, the Department and the taxpayer agreed to base the audit upon a sampling and projection method. The taxpayer chose the months for the sample. The taxpayer also submitted to the Department an unofficial claim for refund or refund report on the same period. This refund report was integrated into the Department's audit. Subsequent to the issuance of the audit report, the taxpayer filed another claim for refund of taxes paid on items that the taxpayer alleges no tax was due. The refund report listed items that the taxpayer felt had been incorrectly assessed use tax in the sample that the Department used to project the taxpayer's tax liability. The taxpayer protests the audit's failure to give credit for some of the items in the first refund request. A hearing on that protest was held. More information will be provided as necessary.

## **1. Sales and Use Tax-Double Taxation**

### **Discussion**

Pursuant to IC 6-2.5-3-2 (a), Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana. All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer protests the assessment of use tax on certain items when the taxpayer contends it paid sales tax to the vendor and self-accrued use tax on the same item. Pursuant to IC 6-2.5-3-4 (a)(1). Use tax does not apply to the use of property in Indiana if “the property was acquired in a retail transaction in Indiana and the state gross retail tax has been paid on the acquisition of that property.” While the taxpayer presented internal documentation indicating that sales tax may have been paid on the subject transactions, it did not sustain its burden of proving that the tax had actually been paid to the retailer.

### **Finding**

The taxpayer’s protest is denied.

## **2. Sales and Use Tax-Manufacturing Machinery and Equipment**

### **Discussion**

A number of exemptions are available from use tax, including those collectively referred to as the manufacturing exemptions. All exemptions must be strictly construed against the party claiming the exemption. *Gross Income Tax Division v. National Bank and Trust Co.*, 79 N.E. 2d 651 (Ind. 1948). IC 6-2.5-5-3 provides for the exemption of “manufacturing machinery, tools and equipment which is to be directly used by the purchaser in the direct production, manufacture, fabrication . . . of tangible personal property.” In *Indiana Department of Revenue v. Cave Stone*, 457 N.E. 2d 520, (Ind. 1983) the Indiana Supreme Court found that a piece of equipment qualifies for the manufacturing exemption if it is essential and integral to the production process. 45 IAC 2.2-5-10 (c) further describes manufacturing machinery and tools as exempt if they have an immediate effect on the property in production. 45 IAC 2.2-5-10 (h)(2) further clarifies the exemption by allowing the exemption of “Replacement parts, used to replace worn, broken, inoperative or missing parts or accessories on exempt machinery and equipment . . .” IC 6-2.5-5-4 extends the exemption to tools used to build exempt machinery and equipment.

The taxpayer purchased seals and gaskets for work rolls. These rollers actually flatten the heated steel in the production process. The use of these replacement parts in the exempt rollers qualifies them for exemption from the use tax.

The taxpayer purchased a parts-reduction mill. This item was a cover-plate seal for a back-up roll used on the 48” reduction mill. This back-up roll was actually used in the production process and the cover-plate seal was an integral part of that piece of the manufacturing machinery that directly affected the production of the steel. The use of this item qualifies for exemption.

The taxpayer purchased a saw used in a shop that fabricates parts for production machine equipment and also performs normal repair and maintenance functions. The saw qualifies for exemption pursuant to 45 IAC 2.2-5-7 (h) for the percentage of the time it is used to fabricate parts for production machine equipment. The percentage of usage of the saw for routine repair and maintenance functions is subject to the use tax.

The taxpayer purchased parts for the burning equipment. These parts were for burning equipment that was used to cut plate steel into varying dimensions. Since these are integral replacement parts of equipment that actually changed the form of the steel in the manufacturing process, these parts qualify for exemption.

The taxpayer purchased parts for the BOP shop machine. These were replacement parts for equipment that was directly used in the direct production of the steel. Therefore they qualify for exemption.

The taxpayer purchased ball valves. These ball valves were replacement parts for machinery that was directly used in the direct production of the taxpayer's product; therefore they qualify for exemption.

The taxpayer purchased parts that were used in pump stations #1 and #2. These pump stations were used to pump lake water into a common water distribution center. The water from that distribution center was primarily used for cooling in the production process. The specific pump stations in contention here did not pump water from the distribution or storage center through the production process to actually directly impact the production process by cooling the steel in the production process as would be required for exemption. These pumps were secondary to the production process in that they pumped the water to the distribution center from which pumps sent the water to be used as coolant in the production process. The subject pumps pumped the water into the storage and distribution center before the water was actually used in the production process. Therefore the use of these pumps and their replacement parts does not qualify for exemption from the use tax.

The taxpayer's next protest concerns tax assessed on parts which the taxpayer alleges were used in the Turbo House boiler which generates steam for use in the steel-making process. The invoices for these parts were coded to a taxable account for the primary water distribution system. Other invoices in this account were for parts purchased for taxable pump stations. The taxpayer does not provide any documentation to support its assertion that these invoices were for purchases to be used in an exempt boiler. Therefore these parts do not qualify for exemption.

The taxpayer purchased sponge gaskets that were used as integral replacement parts in the exempt 6-stand mill which was used to process tin in the Tin Mill. These gaskets qualify for exemption from the use tax.

The taxpayer also purchased software and parts for computers. Computers and software used to operate machinery that is directly used in direct production qualify for exemption from the use tax. The software was purchased for operation of the computers that controlled and operated the 6-stand mills in the Cold Mill. The parts were for computers that operate a blast furnace, the WDPF system used in production and to repair an operator workstation that was used for development and engineering purposes. Except for the parts for the operator workstation that is used for development and engineering purposes, all the software and parts in this item of protest

were used to operate computers that control the production process. Therefore all the parts and software except for the parts for the operator workstation that was used for development and engineering purposes qualify for exemption from the use tax.

The taxpayer withdrew its protests to tax assessed on a computer program purchased on September 30, 1995 for cost center 12220, wc&e 8151 and equipment code lvz01.

The taxpayer claimed refund of tax on certain purchases through the vendor stocking method to replace parts on machinery that was directly used in the direct production process. These items were taken from vendor stocking accounts that the taxpayer coded as taxable. Upon agreement with the taxpayer, the auditor relied on the taxpayer's classification to determine the taxable and exempt vendor stocking accounts. The taxpayer did not present a persuasive reason to ignore its own classification of the vendor stocking accounts.

### **Finding**

The taxpayer's protests are sustained in part and denied in part.

### **3. Sales and Use Tax-Vendor Stocking**

#### **Discussion**

The vendor stocking accounts are for purchases that typically involve lower unit costs than transactions that generate the standard purchase invoice. Vendor stockings are based on predetermined contract prices for a set period for certain goods and services. Invoices are not generated when using the vendor stocking method of purchasing goods or services. Property typically acquired under the vendor stocking method would include nuts, bolts, screws, wiring, labels, cables, hydraulic hoses and others. Some of the uses are taxable and some qualify for exemption as directly used in direct production pursuant to IC 6-2.5-5-3. Examples of the services include delivery and pigeon trapping services. For the projection, the auditor used the taxpayer's own coding system to determine which vendor stocking accounts were taxable and which were exempt. The taxpayer contends that there was miscoding and a significant number that actually qualified for exemption as directly used in direct production were included in the taxable accounts. It was appropriate for the auditor to rely on the taxpayer's records in creating the sample for the audit.

### **Finding**

The taxpayer's protest is denied.

### **4. Sales and Use Tax-Equipment to Move Work in Process**

#### **Discussion**

The taxpayer also purchased items that were used to move product in the production process. The taxpayer contends that these items qualify for exemption as directly used in direct production pursuant to IC 6-2.5-5-3. 45 IAC 2.2-5-8 (f)(3) provides, "transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process."

The specific items in question included parts for a #1 BOP ladle crane, parts for a BOP charge car, grinder drive belts, cables and brake shoes. The grinder driver belts were used in the Roll Shop. The crane was used to move large ladles of molten iron during the casting operation. The charge car was also used to move the product during casting operations. The grinder was used in the refinishing of rolls used in the Hot Rolling Mill. These items qualify for exemption as parts and equipment used to move work in process.

The cable and brake shoes were charged to a shipping account. The taxpayer contends that they were actually used to move work in process. If the cable and brake shoes were actually used to move work in process, the cable and brake shoes would qualify for exemption from the use tax. Taxpayer's protest to the tax assessed against these items is sustained subject to audit verification.

### **Finding**

The taxpayer's protest to the tax assessed on the cable and brake shoes is sustained subject to audit verification. The taxpayer's protests to the other items in this category are sustained.

## **5. Sales and Use Tax-Safety Equipment**

### **Discussion**

The taxpayer purchased leather leggings, aluminum coats, gas masks and carbon monoxide detectors. There is no indication in the audit that the department assessed tax on taxpayer's use of leather leggings, aluminum coats or gas masks.

The personal carbon monoxide detectors were worn on the belts of production personnel in areas where carbon monoxide tends to accumulate and create an extreme health hazard. The portable instruments that were purchased on February 28, 1995 were also personal carbon monoxide detectors. The taxpayer contends that these items qualify for the directly used in direct production exemption pursuant to IC 6-2.5-5-3. 45 IAC 2.2-5-8 (c)(2)(F) provides an exemption for "safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production." Personnel could not work in these areas of the facility without the carbon monoxide detectors. Therefore they qualify for exemption.

The repair parts for the personal carbon monoxide detectors were taken from accounts that the taxpayer and auditor agreed were exempt 85% of the time. It is not appropriate for the taxpayer to pull specific items out of those accounts and consider whether or not they are taxable on an individual basis. The protest to the taxability of these items is denied.

### **Finding**

The taxpayer's protest is sustained in part and denied in part.

## **6. Sales and Use Tax-Services**

### **Discussion**

Indiana imposes a gross retail tax on the sales of tangible personal property by retail merchants in Indiana. IC 6-2.5-2-1. There is no statutory provision imposing a gross retail tax on services. 45 IAC 2.2-4-2 specifically states that there is no Indiana gross retail tax on services. The taxpayer protested the offset on labor charges for the repair of a mill computer, lease termination charges and separately stated delivery charges. The repair of the mill computer is a service that qualifies for exemption.

The taxpayer contends that the lease termination charges are exempt services. In actuality, the lease termination charges represent payments under a renegotiated lease for the computer. The lease of tangible personal property is a retail transaction subject to the gross retail tax pursuant to IC 6-2.5-4-10.

The taxpayer protests the assessment of tax on separately stated delivery charges for paper products delivered to various areas of the facility. The taxpayer contends that the delivery charges qualify for exemption as a service. Services are, however, subject to sales and use tax when they are performed with respect to tangible personal property being transferred in a retail transaction and the services take place prior to the transfer of the tangible personal property. IC 6-2.5-4-1. In fact, generally sellers in Indiana have an obligation to transfer and deliver goods to the buyer unless other arrangements are explicitly agreed upon. IC 26-1-2-301. In this case there is no indication that the title to the paper products was transferred prior to the delivery of the products to the taxpayer.

Therefore, the delivery charges do not qualify as an exempt service. The tax was properly imposed.

### **Finding**

The taxpayer's protest is sustained in part and denied in part.

## **7. Sales and Use Tax-Product Labels**

### **Discussion**

The taxpayer purchased labels. According to IC 6-2.5-5.6, "... transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures, . . ."

The labels in dispute were charged to the shipping, general or administrative accounts. The picture submitted by the taxpayer shows that the labels are attached to the shipping straps rather than directly to the steel. The labels upon which tax was assessed were actually shipping labels. As such they do not meet the statutory requirements for exemption as property incorporated into the product.

### **Finding**

The taxpayer's protest is denied.

## **8. Sales and Use Tax-Packaging**

### **Discussion**

The taxpayer also purchased packaging materials. The taxpayer argues that the packaging materials should be granted exemption as directly used in direct production pursuant to IC 6-2.5-5-3. 45 IAC 2.2-5-16 (c)(1) provides that “. . . nonreturnable containers and wrapping materials including steel strap and shipping pallets to be used by the purchaser as enclosures for selling tangible personal property’ qualify for exemption from the gross retail tax.” Items included in this protest include various sizes of nonreturnable tie-down straps and tie-rods used to secure steel plate products during shipment by rail to the customer. The taxpayer’s product is such that it does not require additional wrapping material for shipping. The items at issue are used to secure the taxpayer’s product for shipping rather than as wrapping material. Therefore they do not qualify for exemption from the use tax.

### **Finding**

The taxpayer’s protest is denied.

## **9. Sales and Use Tax-Testing Equipment**

### **Discussion**

The taxpayer also purchased a product temperature tester that the taxpayer contends qualifies for the directly used in direct production exemption pursuant to IC 6-2.5-5-3. The tester is used to test the temperature of coiled steel, the taxpayer’s end product. As such, the tester is used after the end of the production process and does not qualify for exemption pursuant to 45 IAC 2.2-5-10 (I).

### **Finding**

The taxpayer’s protest is denied.

## **10. Sales and Use Tax-Capital Purchases**

### **Discussion**

The audit assessed tax on materials used in several improvements to the taxpayer’s realty or capital purchases. The taxpayer contends that these transactions qualify for exemption from tax pursuant to the following provisions of 45 IAC 2.2-4-22 (e):

Disposition subject to the use tax. With respect to construction materials contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner:

. . .



(3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

A disposition under C. will be exempt from the use tax if the contractor received a valid exemption certificate from the ultimate purchaser (purchaser) or recipient of the construction material (as converted), provided such person could have initially purchased such property exempt from the state gross retail tax.

In each of the capital purchases the contractor purchased the materials tax-free and the contractor did not receive a valid exemption certificate from the taxpayer. The taxpayer argues that pursuant to the cited Regulations, the contractors are the parties responsible for the payment of use tax on the construction material used in each of the improvements to realty. Following this argument, the Indiana Department of Revenue must collect the unpaid taxes from the contractors rather than the taxpayer.

Evidence indicates, however, that the taxpayer provided the contractors with its direct pay permit. Pursuant to IC 6-2.5-8-9, a business entity may apply for and receive a direct pay permit from the Indiana Department of Revenue. The issuance of a direct pay permit indicates that the purchaser will directly remit to the Indiana Department of Revenue any sales or use tax that is due on that particular transaction. The application of direct pay permits to the taxpayer's situation with contractors is clarified at 45 IAC 2.2-8-17 as follows:

(a) The contractor who has applied for and received permission to pay on a direct payment permit basis may issue direct payment permits to his suppliers, but when acting as a contractor should remember that he must obtain an exemption certificate-not a direct payment permit-from any exempt customer for whom he is making an improvement to real estate as a result of a flat bid or lump sum contract.

. . .

(b) A flat bid contractor, on the other hand, does not sell tangible personal property or collect sales tax as a result of his contract, and the receipt of a direct payment permit is of no value to him. If the organization, for which the contractor is constructing the improvement, is entitled to exemption, they must give the contractor an exemption certificate (ST-105) certifying that fact. A direct payment permit from the organization would not certify that the organization was entitled to exemption-only that they would pay tax for which they were liable.

The taxpayer's specifications for bids indicated that sales and use tax should not be included in the lump sum bid price prepared by contractors. The taxpayer gave contractors direct payment permits that included the language as follows:

Direct payment permits may be issued to contractors on lump sum contracts for the improvement of realty if the contractor supplies a breakdown of the

costs of the materials. If no breakdown of the cost of the materials is available, the contractor will be liable for tax on the materials.

The instructions on the face of the direct pay permits indicate that they may be given to contractors if the costs of the materials are stated separately as they were in the instances assessed under the audit. It would be reasonable for the contractors in such circumstances to accept the direct pay permits and think that the taxpayer would pay the required taxes. It is disingenuous at this point for the taxpayer to rely on the distribution of direct pay permits rather than exemption certificates to deny liability for the payment of the sales and use taxes on the materials used in the improvements to the taxpayer's realty. Therefore, the taxpayer is liable for the taxes on the materials in any capital improvement not used in an exempt manner.

The taxpayer protests the assessments of use tax on materials used in several lump sum contracts for which the taxpayer does not allege any other exempt use. These protests include UGA1-0283-84" Finishing Mill Improvements; UGA1-0318-North Sheet Mill Building Extension for Pro-Tec; UGA1-0331-Rehabilitate No. 8 Blast Furnace; UGA1-0336-Replace Turbo Blower Boiler House Roof; UGA1-0344-No. 1 Caster Operating Trailer Complex; UGA1-0358-No. 4 Blast Furnace Hoist House HVAC System Upgrades; UGA1-0366-Tar Loading Facility; UGA1-0367 Wheelchair Lift; UGA1-0400-Steelworker" Memorial; UGA1-0445-No. 8 Blast Furnace Repairs-Iron Producing Division; UGA1-0488, Housing for No. 8 Blast Furnace Emergency Repairs; UGA1-0381-No.2 Q-BOP SIP Emission Control System; and UGA1-0493-Research Equipment-Metallurgical Lab Improvements. The taxpayer is liable for the use tax on the materials used in each of these improvements to the taxpayer's realty.

The taxpayer also protests the assessment of use tax on materials that the taxpayer contends were used in projects qualifying for the directly used in direct production exemption pursuant to IC 6-2.5-5-3.

The first of these protests was for tax assessed on improvements to the 84" pickle line. These improvements included a welder pulpit, a camera and a knife removal device. The welder pulpit is the building around the controls for the pickle line. This building is for the convenience of the employee and is not an essential and integral part of the production process. Therefore it does not qualify for exemption. The line operator uses the camera to observe distant portions of the pickle line. This camera is for the operator's convenience and does not qualify for the exemption. The knife removal device is attached to the pickle line equipment. It is swung into position whenever a pickle line knife must be replaced. It does not have an immediate effect on the material being produced and is too far removed from the actual production process to qualify for exemption.

The next protest is for tax assessed on materials used in a project to control zebra mussels in a service water system. This system, as discussed earlier in this Letter of Findings, pumped water from Lake Michigan to a holding tank. Water was then pumped from the holding tank to the cooling system. These materials were used at the point the water was pumped out of Lake Michigan, before the beginning of the production process. Therefore the taxpayer is liable for use tax on these materials.

The taxpayer also protests the assessment of use tax on materials used in constructing concrete walls used in construction of cement walls and an extension of the casthouse in a project to improve the dry slag pits. These pits store a by-product of the production process. This storage

takes place after the end of the production process. These items do not qualify for exemption as directly used in direct production.

The next protest concerns the assessment of use tax on improvements to the motor room cooling system for the 84" hot strip mill. These improvements were to cool the electrical equipment that powers the mill machinery. The taxpayer contends that since a cool environment is necessary, these items have an immediate link with production and qualify for the exemption. The Department assessed tax pursuant to 45 IAC 2.2-5-8(j). That regulation specifically states that cooling equipment is subject to use tax. *Indiana Department of State Revenue v. RCA Corporation*, 310 N.E. 2d 96 (Ind. 1974) deals with this issue. In that case, RCA argued that the air conditioning system was exempt because it was directly used in the direct production of the television tubes. The cooling system in this case is analogous to the cooling system that the Court determined was taxable in the RCA case. While both systems are needed for production, the Court clearly stated that that was not the test to determine if the system was qualified for exemption. To qualify for exemption, the air cooling system must directly affect the production of the tangible personal property. In this case, the air cooling system directly affects the air rather than the production process. That is too far removed from the production of steel to qualify for the directly used in direct production exemption. Therefore, the taxpayer's protest to this assessment is denied.

The next protest concerns the assessment of use tax on the material in a fire protection system for the 84" hot strip mill. Under this appropriation, a water/foam deluge system was installed on the seven finishing mills, vertical scale breaker, six roughing mills and motor room wall. The tax treatment of the fire prevention system is similar to the tax treatment of the cooling system. It does not directly impact the production of the product. The taxpayer is liable for use tax on the fire prevention system pursuant to 45 IAC 2.2-5-8 (j).

The taxpayer's final protest based on the directly used in direct production exemption is to use tax assessed on materials used in the Q-BOP Mixer Area improvements. These improvements include video cameras, a new pulpit and lighting. The video cameras are used to allow the operator to observe the production process. This use is for the operator's convenience and does not qualify for exemption. The new pulpit is the building around the operating controls. The building does not directly affect the production of steel. Therefore, the taxpayer is liable use tax on the pulpit. The lighting is for the general lighting of the room. It also does not directly affect the production process. Therefore, the taxpayer's protest to the use tax assessed on the lighting materials is denied. The taxpayer also contends that there were double invoices on rail stops and vendor materials in this order. The use of any item can only be taxed once. This protest is sustained subject to audit verification.

The next general area of the taxpayer's protest includes improvements that the taxpayer argues are exempt because they were used for environmental purposes. The contested contracts include UGA1-0262-Gary Works Sewer Remediation Consent Decree, UGA1-0305-Door and Jamb Cleaners, UGA1-0425-Install Above Ground Spent Acid Tank for the Metallurgical Lab, UGA1-0447-Gary Works Green Lights Program, and UGA1-0443-Tank Truck Secondary Spill Containment.

IC 6-2.5-5-30 (1) provides an exemption for items used as follows:

The property constitutes, is incorporated into, or is consumed in the operation of, a device, facility, or structure predominantly used and acquired for the purpose of complying with any state, local, or federal environmental quality statutes, regulations, or standards;

The taxpayer protests the assessment of use tax on items coded in category UGA1-0262. The taxpayer claims that these items were used in accordance with the Gary Sewer Works Consent Decree of 1988 between the taxpayer and the Environmental Protection Agency. The Consent Decree, however, requires that the taxpayer provide various Management Plans that would identify and develop implementation schedules for construction projects to implement further compliance associated with the Consent Decree. These items would actually qualify for exemption if they were used in construction to correct the problems addressed in the Consent Decree. There is, however, no evidence in the file that the items were actually used in construction associated with the Consent Decree. The protest is sustained pursuant to the taxpayer providing documentation that the claimed purchases are part of the plans for compliance submitted to the EPA.

The taxpayer did not produce adequate documentation to sustain its burden of proving that they Door and Jamb Cleaners and Tank Truck Secondary Spill Containment contracts were actually entered into and the purchases made to comply with environmental standards. The use of tangible personal property for the completion of these contracts is subject to the use tax.

The taxpayer installed an Above Ground Spent Acid Tank for the Metallurgical Lab. This tank was installed to comply with environmental quality regulations. As such, it qualifies for exemption from the use tax.

The taxpayer also protests the assessment of use tax on items used in the Gary Works Green Lights Program. The primary purpose of the program was to install energy efficient lighting as opposed to compliance with statutes, regulations or standards. The documentation in the file indicates that this was a voluntary program. The taxpayer could terminate the agreement without notice of penalties. This protest is denied.

The taxpayer also protests the assessment of use tax on materials used in a project to renovate the highline structure. The highline is an elevated steel structure that is utilized to deliver metallurgical coke to the blast furnaces via stockhouse material bins. The structure supports three parallel railroad tracks on the topside and furnace material bins on the underside. The materials used in this project on which tax was assessed included doors and sheeting. The taxpayer contends that these items qualify for exemption because they were used to rebuild equipment that transports work in process.

45 IAC 2.2-5-8 (f)(3) provides that, "transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process." The only part of the structure that is actually used to transport product is the railroad line section of the highline structure. The stockhouse material bins store product. Since there is no exemption for storage facilities, any materials used in renovating these bins would be subject to use tax. The doors and sheeting would not be materials used in rebuilding

the railroad lines, but rather be used in the storage portion of the structure. Therefore they do not qualify for exemption.

The taxpayer also protests the assessment of use tax on materials used in constructing Section C items. These are capitalized assets that were under \$25,000.00 in cost. The auditor used the standard industry percentages for labor and materials in determining the tax due on these items. This is appropriate. The taxpayer's protest to this item is denied.

### **Finding**

The taxpayer's protests are sustained in part, sustained subject to audit verification in part and denied in part.